

## § 701.1

- 701.112 “Blanket routine uses.”
- 701.113 PA exemptions.
- 701.114 PA enforcement actions.
- 701.115 Protected personal information (PPI).
- 701.116 PA systems of records notices overview.
- 701.117 Changes to PA systems of records.
- 701.118 Privacy, IT, and PIAs.
- 701.119 Privacy and the web.
- 701.120 Processing requests that cite or imply PA, Freedom of Information (FOIA), or PA/FOIA.
- 701.121 Processing “routine use” disclosures.
- 701.122 Medical records.
- 701.123 PA fees.
- 701.124 PA self assessments/inspections.
- 701.125 Computer matching program.

### Subpart G—Privacy Act Exemptions

- 701.126 Purpose.
- 701.127 Exemption for classified records.
- 701.128 Exemptions for specific Navy record systems.
- 701.129 Exemptions for specific Marine Corps record systems.

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SOURCE: 64 FR 49850, Sept. 14, 1999, unless otherwise noted.

## Subpart A—Department of the Navy Freedom of Information Act (FOIA) Program

### § 701.1 Purpose.

Subparts A, B, C, and D of this part issue policies and procedures for implementing the Freedom of Information Act (5 U.S.C. 552), and Department of Defense Directives 5400.7 and 5400.7-R series<sup>1</sup>, Department of Defense Freedom of Information Act Program, (See 32 CFR part 286) and promote uniformity in the Department of the Navy Freedom of Information Act (FOIA) Program.

### § 701.2 Navy FOIA website/FOIA handbook.

(a) The Navy FOIA website (<http://www.ogc.secnav.hq.navy.mil/foia/index.html>) is an excellent resource for requesters and FOIA coordinators. It provides connectivity to the Navy’s official website, to other FOIA and non/

## 32 CFR Ch. VI (7–1–08 Edition)

FOIA websites, and to the Navy’s electronic reading rooms.

(b) FOIA requesters are encouraged to visit the Navy FOIA website prior to filing a request. It features a FOIA Handbook which provides: guidance on how and where to submit requests; what’s releasable/what’s not; addresses for frequently requested information; time limits and addresses for filing appeals, etc. FOIA requesters may also use the electronic FOIA request form on the website to seek access to records originated by the Secretary of the Navy (SECNAV) or the Chief of Naval Operations (CNO).

### § 701.3 Applicability.

(a) Subparts A, B, C, and D of this part apply throughout the Department of the Navy (DON) and take precedence over other DON instructions, which may serve to supplement it [*i.e.*, Public Affairs Regulations, Security Classification Regulations, Navy Regulations, Marine Corps Orders, etc.]. Further, issuance of supplementary instructions by DON activities, deemed essential to the accommodation of perceived requirements peculiar to those activities, may not conflict.

(b) The FOIA applies to “records” maintained by “agencies” within the Executive Branch of the Federal government, including the Executive Office of the President and independent regulatory agencies. It states that “any person” (U.S. citizen; foreigner, whether living inside or outside the United States; partnerships; corporations; associations; and foreign and domestic governments) has the right enforceable by law, to access Federal agency records, except to the extent that such records (or portions thereof) are protected from disclosure by one or more of the nine FOIA exemptions or one of three special law enforcement exclusions.

(c) Neither Federal agencies nor fugitives from justice may use the FOIA to access agency records.

(d) The Department of Defense (DoD) FOIA directive states that the FOIA programs of the U.S. Atlantic Command and the U.S. Pacific Command

<sup>1</sup>Copies may be obtained if needed from the Navy FOIA Website at <http://www.ogc.secnav.hq.navy.mil/foia/index.html>

## Department of the Navy, DoD

## § 701.4

fall under the jurisdiction of the Department of Defense and not the Department of the Navy. This policy represents an exception to the policies directed under DoD Directive 5100.3, "Support of the Headquarters of Unified, Specified, and Subordinate Commands."

### § 701.4 Responsibility and authority.

(a) The Head, DON PA/FOIA Policy Branch [CNO (N09B30)] has been delegated the responsibility for managing the DON's FOIA program, which includes setting FOIA policy and administering, supervising, and overseeing the execution of the 5 U.S.C. 552 and Department of Defense Directives 5400.7 and 5400.7-R series, Department of Defense Freedom of Information Act Program (see 32 CFR part 286).

(1) As principal DON FOIA policy official, CNO (N09B30) issues SECNAV Instruction 5720.42; oversees the administration of the DON FOIA program; issues and disseminates FOIA policy; oversees the Navy FOIA website; represents the DON at all meetings, symposiums, and conferences that address FOIA matters; writes the Navy's FOIA Handbook; serves on FOIA boards and committees; serves as principal policy advisor and oversight official on all FOIA matters; prepares the DON Annual FOIA Report for submission to the Attorney General; reviews all FOIA appeals to determine trends that impact on the DON; reviews all FOIA litigation matters involving the DON and apprises the Director, Freedom of Information and Security Review, DoD of same; responds to depositions and litigation regarding DON FOIA policy Secretary of the Navy Instruction 5820.8A, Release of Information for Litigation Purposes and Testimony by DON Personnel; reviews/analyzes all proposed FOIA legislation to determine its impact on the DON; develops a Navy-wide FOIA training program and serves as training oversight manager; conducts staff assistance visits/reviews within the DON to ensure compliance with 5 U.S.C. 552 and this part; reviews all SECNAV and Operations Navy instructions/forms that address FOIA; and oversees the processing of FOIA requests received by SECNAV and Chief of Naval Operations (CNO), to ensure

responses are complete, timely, and accurate. Additionally, N09B30 works closely with other DoD and DON officials to ensure they are aware of highly visible and/or sensitive FOIA requests being processed by the DON.

(2) SECNAV has delegated Initial Denial Authority (IDA) to N09B30 for requests at the Secretariat and OPNAV level.

(b) The Commandant of the Marine Corps is delegated responsibility for administering and supervising the execution of this instruction within the Marine Corps. To accomplish this task, the Director of Administrative Resource Management (Code ARAD) serves as the FOIA Coordinator for Headquarters, U.S. Marine Corps, and assists CNO (N09B30) in promoting the Department of the Navy FOIA Program by issuing a Marine Corps FOIA Handbook; utilizing the Marine Corps FOIA website to disseminate FOIA information; consolidating its activities Annual FOIA Reports and submitting it to CNO (N09B30); maintaining a current list of Marine Corps FOIA coordinators, etc.

(c) The DON Chief Information Officer (DONCIO) is responsible for preparing and making publicly available upon request an index of all DON major information systems and a description of major information and record locator systems maintained by the Department of the Navy as required by 5 U.S.C. 552 and DoD 5400.7-R, "DoD Freedom of Information Act Program."

(d) FOIA coordinators will:

(1) Implement and administer a local FOIA program under this instruction; serve as principal point of contact on FOIA matters; issue a command/activity instruction that implements SECNAVINST 5740.42F by reference and highlights only those areas unique to the command/activity (*i.e.*, designate the command/activity's FOIA Coordinator and IDA; address internal FOIA processing procedures; and address command/activity level FOIA reporting requirements); receive and track FOIA requests to ensure responses are made in compliance with 5 U.S.C. 552 and DoD Directives 5400.7 and 5400.7-R and this part; provide general awareness training to command/activity personnel on the provisions of